

2009

# Twenty-five Years of Doing Minnesota Justice

Harriet Lansing

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

## Recommended Citation

Lansing, Harriet (2009) "Twenty-five Years of Doing Minnesota Justice," *William Mitchell Law Review*: Vol. 35: Iss. 4, Article 7.  
Available at: <http://open.mitchellhamline.edu/wmlr/vol35/iss4/7>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact [sean.felhofer@mitchellhamline.edu](mailto:sean.felhofer@mitchellhamline.edu).

© Mitchell Hamline School of Law

## TWENTY-FIVE YEARS OF DOING MINNESOTA JUSTICE

Harriet Lansing<sup>†</sup>

I. INTRODUCTION .....	1244
II. GUIDING PRINCIPLES FOR A NEW COURT .....	1247
III. DISSENTING VOICES .....	1250
IV. RAVE REVIEWS .....	1253
V. GROWING PAINS .....	1254
VI. GUIDING PRINCIPLES IN REVIEW .....	1256
VII. THE FUTURE .....	1258
VIII. CONCLUSION .....	1259

### I. INTRODUCTION

In framing a title for these remarks, I was inspired by a newspaper ad that was used in support of the vote for the 1982 state constitutional amendment that was necessary to create the Minnesota Court of Appeals. The ad appeared in the Minneapolis Tribune in late October of 1982. It shows the two candidates for governor—Rudy Perpich and Wheelock Whitney—or half for each of them fused together to emphasize that the gubernatorial candidates were united in their support for creating a “state appeals court for Minnesota.”<sup>1</sup>

---

<sup>†</sup> Judge, Minnesota Court of Appeals. B.A., 1967, Macalester College; J.D., 1970, University of Minnesota Law School. Judge Lansing is one of the original members of the Minnesota Court of Appeals, appointed in 1983. From 1978 to 1983, she was a judge on the Ramsey County trial court. Before her appointment to the court, she was a Saint Paul City Attorney and a private practitioner with a practice in civil, criminal, and administrative law. She has chaired the administrative committee of the court of appeals and has been active in court initiatives, including the family law mediation program. She currently serves as Vice President of the Uniform Law Conference and, for the past eight years, has been a member of the faculty of the New York University Appellate Judges Institute.

1. Advertisement, *State Appeals Court Amendment*, STAR TRIB. (Minneapolis), Oct. 21, 1982, reprinted in 2 STEPPING STONES AND THE JUDICIAL CAREER OF DOUGLAS K. AMDAHL 415 (Minnesota State Law Library ed., 1992) [STEPPING STONES].



The text underneath the fused image advances the idea that the unrivaled quality of life in Minnesota should be matched by the quality of our justice system. The message then concludes by saying, we need “a court system that does Minnesota justice.”<sup>2</sup>

Reading that text caused me to reflect on whether we could say with any degree of confidence, as we approached the court’s quarter-century mark, whether our court of appeals *has* done Minnesota justice.

It’s a good time for an evaluation, because in many ways this last year has been a watershed year for the court. But before we address the events of this most recent year, let’s start at the beginning and see if we can fashion some comprehensive standard—or as we often say, a standard of review—to evaluate whether our court of appeals really has done Minnesota justice.

Some reviewers might begin from a starting point of 1942, which is the year that the Minnesota Judicial Council first made a public recommendation for the creation of an intermediate court of appeals.<sup>3</sup> Others, such as Doug Amdahl and Bob Sheran,

2. *Id.*

3. Peter S. Popovich, *Beginning a Judicial Tradition: Formative Years of the Minnesota Court of Appeals 1983–1987* (Nov. 1987), in *THE JUDICIAL CAREER OF PETER S. POPOVICH* 372 (Minnesota State Law Library ed., 1998).

started their account of the development of the court with events in the 1950s.<sup>4</sup> But most reviewers agree that the primary struggle for the court's origin occurred in the late 1970s and early 1980s and culminated in those months leading up to the 1982 vote on the constitutional amendment.

Simply stated, the precipitating cause for the creation of the Minnesota Court of Appeals was an overwhelming deluge of appellate filings in the Minnesota Supreme Court. As Chief Justice Douglas Amdahl said in an October 1982 interview, "We are simply buried."<sup>5</sup> During the first part of the twentieth century, the supreme court was handling two to four hundred cases a year. Consistent with that number, in 1957, there were about 213 filings.<sup>6</sup> But between 1957 and 1982, the filings increased from 213 to 1,682, an alarming increase of 700%.<sup>7</sup>

Chief Justice Amdahl estimated that out of the 1,682 cases, the court could only reasonably handle 250.<sup>8</sup> Nonetheless, the supreme court struggled mightily to handle the flood. In 1982, Justice Amdahl recounted the court's attempts: "We have gone to three-judge panels; we have had five-judge panels; we have prehearing conferences; we have used staff to the utmost; we have tried most everything. But we have not been successful."<sup>9</sup> Instead, Justice Amdahl concluded, these measures have:

dilute[d] the very purpose of [an appellate court] . . . [the] opportunity to be heard, to present their contentions to a dispassionate tribunal, and to receive a

4. Robert J. Sheran & Douglas K. Amdahl, *Minnesota Judicial System: Twenty-Five Years of Radical Change*, 26 HAMLINE L. REV. 219, 247 (2003).

5. Jeanine Nistler, *Quie, Amdahl in Mankato to Promote Appeals Courts*, MANKATO FREE PRESS, Oct. 10, 1982, reprinted in STEPPING STONES, *supra* note 1, at 410.

6. MINNESOTA STATE BAR ASSOCIATION, FOR THE RECORD, 150 YEARS OF LAW & LAWYERS IN MINNESOTA 156 (1999) [MSBA].

7. *Id.* at 156; see also David W. Larson, *Jurisdiction of the Minnesota Court of Appeals*, 10 WM. MITCHELL L. REV. 627, 641-42 (1984).

8. Douglas Amdahl, Editorial, *The Arguments For and Against an Intermediate Appeals Court: PRO: Case Load of High Court is Denial of Justice*, ST. PAUL PIONEER PRESS (Minn.), Oct. 10, 1982, reprinted in STEPPING STONES, *supra* note 1, at 411.

9. Douglas K. Amdahl, Chief Justice, Minnesota Supreme Court, State of the Judiciary Address 4 (June 19, 1982), in STEPPING STONES, *supra* note 1, at 789-807. Justice Amdahl did not, in this address, refer to other supreme court attempts to manage its caseload that he often mentioned, including increasing the court size from seven to nine, restricting oral arguments to a fraction of cases, and limiting the court's written opinions. Douglas K. Amdahl, *The Case for a Minnesota Court of Appeals*, in STEPPING STONES, *supra* note 1, at 406-07; see also Sheran & Amdahl, *supra* note 4, at 248.

prompt resolution of their appeals...[in] carefully crafted opinions prepared by judges who [have read their briefs and heard their arguments]. When this fails, we raise many more questions than we answer. Appeals which do not include those ingredients are appeals in name only. We are absolutely determined to make the [s]upreme [c]ourt and the appellate function meaningful once again.<sup>10</sup>

## II. GUIDING PRINCIPLES FOR A NEW COURT

Justice Amdahl's absolute determination had been building at a rate comparable to the increase in filings, and his concept of the purpose of appellate review was a strong vision. Out of his deeply expressed concerns for the welfare and future of appellate review, we have the beginnings of a "standard of review" to conduct our evaluation on the court's performance. We can glean four bedrock principles that Justice Amdahl and the other members of the supreme court were trying to salvage in that flood of appeals—four standards that they considered absolutely essential to the appellate function and central to their vision in 1981 and 1982 of what an intermediate court of appeals should provide.

First, they were seeking a reprieve from the sheer number and weight of the dramatic increase in appellate cases. They needed an intermediate appellate court that could wade into that deluge and pick up those cases so that the supreme court could rescue its essential purpose as a properly functioning court of last resort that could focus on its policy-making responsibilities.

Justice Amdahl described the pressure on the individual judges. Justice Otis had recently returned from a nine-day absence only to find ninety opinions on his desk requiring his immediate attention.<sup>11</sup> Justice Otis lived near us and we have a vision of him late on summer evenings having fallen asleep on the couch with briefs stacked and tented around him. As Amdahl said with his warm wit, "The [s]upreme [c]ourt had simply reached the stage where it could no longer properly handle, or maybe even

---

10. Amdahl, State of the Judiciary 1982, *supra* note 9; *see also* Sheran & Amdahl, *supra* note 4, at 248.

11. Margaret Zack, *Amdahl Seeks New Appellate Court to Ease Burden*, STAR TRIB. (Minneapolis), Nov. 25, 1981, at 3B (quoting Amdahl), *reprinted in* STEPPING STONES, *supra* note 1, at 364.

improperly handle, the deluge of cases coming before it.”<sup>12</sup>

The second fundamental review principle that Amdahl’s court was attempting to salvage was Minnesota’s longstanding tradition of oral arguments in appellate cases. They wanted to reinstate the right to oral argument and to have an intermediate court of appeals that could take the time to hear oral argument and provide the opportunity for oral argument to every litigant who requested it.

The third appellate review principle that they were attempting to save was the right of litigants to get a written opinion that explained the appellate court’s reasons for its decisions, as Amdahl expressed it, a court that would provide “carefully crafted opinions” after reading the briefs and hearing the arguments.<sup>13</sup> Amdahl estimated that the court in 1978 was issuing opinions in less than 30% of its cases.<sup>14</sup> The rest of the cases received summary—usually one line—affirmances.

The fourth appellate-review principle that they were fighting for was the ability to provide *prompt* resolution and opinions in every case. They knew that without a court of appeals they could not do it. The supreme court’s delay in processing appellate cases had risen to fifteen months for civil appeals and was as high as twenty-two months for criminal appeals, far in excess of the ABA standards of six months from filing to resolution.<sup>15</sup>

In addition to the hopes and goals that were expressed by Justice Amdahl and the members of his court, other groups in Minnesota were formulating their expectations for the function and structure of an intermediate court of appeals. Minnesota’s lawyers, consistent with their history of stewardship in issues of public interest, joined in the sustained effort to make the court of appeals a reality.

A bar association committee first chaired by O.C. Adamson, and later by Wayne Popham, spent countless hours looking at materials that discussed and analyzed appellate review and also looking at the appellate structures of other states that already had

---

12. Sheran & Amdahl, *supra* note 4, at 248.

13. Amdahl, State of the Judiciary 1982, *supra* note 9; *see also* Sheran & Amdahl, *supra* note 4, at 248.

14. Gregory A. Lang, *Proposal to Create a Court of Appeals for Minnesota*, Sept. 27, 1980, at 3, STEPPING STONES, *supra* note 1, at 311–18; *see also* Editorial, *A State Appellate Court*, ST. PAUL PIONEER PRESS (Minn.), Feb. 14, 1982, at 2, STEPPING STONES, *supra* note 1, at 400.

15. Lang, *supra* note 14, at 2; *see also* Editorial, *supra* note 14, at 2.

intermediate appellate courts.<sup>16</sup> The committee attempted to identify the best practices in the other thirty-three to thirty-five intermediate appellate courts, so they could develop a structure that would work well for Minnesota.<sup>17</sup>

The bar association committee believed that Minnesota needed one centralized court but that the court should maintain a connection with all parts of Minnesota by regularly hearing oral argument in districts around the state.<sup>18</sup>

The bar association committee and the emerging legislative authors also shared the goals that were expressed by the supreme court. Specifically, they were intent on the idea that the intermediate appellate court should not only issue written opinions that stated the reasons for the decision but should also do it very promptly. The proposed legislation that was ultimately adopted required that a decision in every case must be issued within ninety days of oral argument or non-oral consideration.<sup>19</sup>

Aggregating these hopes and expectations, we now have six fundamental principles of appellate review that the Minnesota Supreme Court, the Minnesota State Bar Association, and the legislative authors were hoping to achieve by creating the Minnesota Court of Appeals:

- (1) to take the caseload pressure off the supreme court so it could function like a supreme court;
- (2) to offer oral argument in all cases;
- (3) to provide written opinions in all cases, explaining the

16. Letter from Conrad M. Fredin, Member, Citizens Conference Comm., to Douglas K. Amdahl, Chief Justice, Minnesota Supreme Court (Sept. 20, 1980), in *STEPPING STONES*, *supra* note 1, at 307; Memorandum from Conrad M. Fredin, Member, Citizens Conference Comm., to Special Comm. Studying Intermediate Appellate Procedures (Sept. 8, 1980), in *STEPPING STONES*, *supra* note 1, at 308; Minutes of Minnesota State Bar Ass'n Ad Hoc Comm. for Intermediate Appellate Court (Sept. 25, 1981), in *STEPPING STONES*, *supra* note 1, at 336–38 (Minnesota State Law Library ed., 1992); *see also* William J. Cooper, *Intermediate Court of Appeals: Yes*, MINN. TRIAL LAW, Mar.–Apr. 1982 at 6, 22–23.

17. The references to the number of states that already had intermediate appellate courts varied between thirty-three and thirty-five. Larson, *supra* note 7, at 627–28 (at least thirty-three states); Zack, *supra* note 11 (stating that thirty-five states had an intermediate appellate court).

18. This belief was incorporated into H.R. 1727, 72d Leg., Reg. Sess., 1982 Minn. Laws, ch. 501, § 1–27, at 569–81.

19. *Id.*; *see* MINN. STAT. § 480A.08, subd. 3 (1982) (requiring written decision to be issued within ninety days of oral argument). By order dated June 30, 1987, the court applied the same deadline to cases decided by non-oral conference.

- reason for the decision;
- (4) to resolve cases as soon as possible after the initial filing to avoid a backlog before the case is scheduled for hearing;
  - (5) to ensure prompt action by the authoring judge so that every opinion would go out the door within ninety days of when the panel heard the oral argument or held the nonoral conference; and
  - (6) to hear oral arguments at locations around the state.

These were the principles or the standards for review put forth by the proponents of a new intermediate appellate court, but what about the standards that were emerging from those who opposed the new court?

When Doug Amdahl swore in the first six of us at the Old Federal Courts Building, now the Landmark Center, on November 2, 1983, as Peter Popovich, Ed Parker, Dan Foley, Don Wozniak, Sue Sedgwick, and I stood on that raised dais, the reality of the court seemed far more inevitable and the struggle less spirited than it truly had been.<sup>20</sup> A notable battle had been waged over the necessity and the proposed structure of the court, and there had been worthy opponents to its creation.

### III. DISSENTING VOICES

Seven of the twenty-one members of the Ad Hoc Intermediate Appellate Court Committee had dissented from the recommendation for the court's creation.<sup>21</sup> They feared that an intermediate court of appeals could not provide adequate access, high-quality decisions, timely opinions, or finality.<sup>22</sup> Instead of an additional appellate court, the dissenters wanted to expand the supreme court to fifteen judges who would sit in panels of five with an en banc panel on important cases.<sup>23</sup> Other opponents suggested that the legislature create appellate divisions within the district

20. See Douglas K. Amdahl, *Court of Appeals*, in STEPPING STONES, *supra* note 1, at 285–301 (summarizing the struggle to pass legislation and constitutional amendment).

21. See Editorial, *The Arguments For and Against an Intermediate Appeals Court: CON: Expanded Supreme Court Can Do the Job*, ST. PAUL PIONEER PRESS (Minn.), Oct. 10, 1982 (quoting Minority Report of the Ad Hoc Intermediate Appellate Court Committee), *reprinted in* STEPPING STONES, *supra* note 1, at 411.

22. *Id.*

23. *Id.*



courts, similar to the New York structure.<sup>24</sup>

Additional voices were raised in opposition. Henry Halladay produced a well written article warning that an intermediate appellate court would increase the judicial bureaucracy and add only more work, delay, and expense to the process of judicial review.<sup>25</sup> Carl Norberg, the Administrative Assistant to the President of the Minnesota Senate, expressed reservations.<sup>26</sup> Carl's view was supported by others who questioned genuinely and sometimes adamantly whether an intermediate appellate court was the right decision.

A primary concern of the opposition related to finality. Lawyers and district court judges feared that an intermediate appellate court would merely add another layer between the litigant and the ultimate resolution and that the appellate process would only become costlier and more delayed.<sup>27</sup>

In response to this concern, Justice Amdahl told newspaper editorial writers around the state that he estimated that 85% of the appeals would be finally resolved at the court of appeals level and that further review by the supreme court with its attendant costs and delays would not be necessary in more than 15% of the cases.<sup>28</sup>

It is interesting to watch the increase in that estimate as the battle heated up and as the November election grew closer. In various editorials Justice Amdahl was progressively quoted as moving up from 85% to 90%.<sup>29</sup> And near the end, the prediction was that 95% of the cases would stop at the court of appeals level.<sup>30</sup>

24. See Carl Norberg, *Some Second and Third Thoughts on an Intermediate Court of Appeals*, 7 WM. MITCHELL L. REV. 93, 125–26 (1981).

25. Henry Halladay, *Minnesota Does Not Need an Intermediate Appellate Court*, 7 WM. MITCHELL L. REV. 131, 132–38 (1981).

26. See generally Norberg, *supra* note 24.

27. *Id.* at 105–09.

28. Zack, *supra* note 11.

29. Minnesota Citizens for Court Reform, Sidney A. Rand, Editorial, *Appeals Court For Minnesota*, FERGUS FALLS DAILY J. (Minn.), Jan. 23, 1982, reprinted in STEPPING STONES, *supra* note 1, at 383. The copy of this editorial in Amdahl's papers has a typewritten note that similar editorials appeared in the *Champlin Dayton Press* (Minn.) on February 4, 1982; in *The Country Echo* (Pequot Lake, Minn.) on February 11, 1982; in the *Crow River News* (Minn.) on February 3, 1982; and in the *Osseo-Maple Grove Press* (Minn.) on February 3, 1982. STEPPING STONES, *supra* note 1, at 383 (Minnesota State Law Library ed., 1992). All indicated that Amdahl said 85% will end at the Court of Appeals. But by March 23, 1982, the prediction had moved to 85–90%. See *Appeals Court Issue to Be on Nov. 2 Ballot*, STAR TRIB. (Minneapolis), Mar. 23, 1982, at 3B.

30. Ninety-five percent was the high end of an estimated range in a one-page information sheet that was prepared by "Appeals Court—Vote Yes—Committee,"

Perhaps if there had been another couple of months in the campaign, the predicted percentage might have risen to the point where petitions for review would have been in danger of extinction.

This concern for finality gives us a seventh principle or standard for review to add to our other six: that at least 85% of the cases would stop at the court of appeals and not require further review by the supreme court.

One of the most inspired opponents to the creation of the appellate court was my feisty and talented colleague on the Ramsey County bench, Judge Joe Summers. In a January 1982 letter he said in his characteristically direct prose style: “[a court of appeals] would be a waste of money, produce an avalanche of new appeals, make litigation more costly and slow, and probably make [Minnesota] winters colder.”<sup>31</sup>

But despite the spirited opposition, in the end the struggle to create the court of appeals did pull together. I do not think that there was a community group left standing that Doug Amdahl had not persuaded to join the list of those supporting the creation of the court. The League of Women Voters worked tirelessly from the outset, the Farmer’s Union came on board early, the AFL-CIO joined the cause in March of 1982, and the Minnesota Association of Commerce and Industry also signed on in the summer of 1982.<sup>32</sup>

These groups and a host of other organizations embraced the vision of the intermediate court of appeals that had been articulated by Doug Amdahl, the state bar association, and the legislature. And, in the final analysis, the citizens of Minnesota—80% of those who voted on the amendment and an overall 75% of those who had turned in a ballot—voted “Yes” on the constitutional amendment to create the court.<sup>33</sup>

Returning to our overarching evaluation question: Has the court of appeals done justice to the vision articulated by Doug Amdahl and the other members of his court? How about the

---

and was distributed by Minnesota League of Women Voters at the Minnesota State Fair in September 1982. Information sheet, Appeals Court—Vote Yes—Committee, “Vote Yes State Appeals Court,” (Sept. 1982), in STEPPING STONES, *supra* note 1, at 418.

31. Letter from Joseph P. Summers, Dist. Court Judge, State of Minn., to Bruce C. Stone, Dist. Court Judge, State of Minn. (Jan. 13, 1982), in 2 STEPPING STONES *supra* note 1, at 381–82.

32. Amdahl, *Court of Appeals*, *supra* note 20, at 285–301.

33. *Id.* at 297–98; see also Larson, *supra* note 7, at 631 n.20; Sheran & Amdahl, *supra* note 4, at 248 (stating that 80% of those voting on the amendment approved).

thousands of individual and group proponents that the court enlisted in its cause? The loyal opponents who expressed their concerns? Most importantly, has the court done justice to our Minnesota citizens, those who did and who did not vote for the constitutional amendment?

#### IV. RAVE REVIEWS

The response in the early days was uniformly and overwhelmingly positive. As Justice Sheran wrote in the 2003 *Hamline Law Journal* article, “The strong support for the change would have quickly eroded had there been a failure of performance.”<sup>34</sup> But, as Justice Sheran puts it, “The performance was superb.”<sup>35</sup> Or as Justice Amdahl said in a 1986 letter, “You and your fellow judges have succeeded even beyond the most optimistic expectations of the bench and bar.”<sup>36</sup>

Amdahl enthusiastically reported as early as April 1984 when we were joined by the second six judges of the statutory court of twelve, that the court of appeals was fulfilling its promise to issue a written opinion in every case, to grant oral argument whenever requested, and deciding cases within ninety days after submission.<sup>37</sup> Bar representatives and legislators joined in the commendations saying that “it’s a widely held opinion that the court is working amazingly well—issuing cogent, well-reasoned and timely opinions on a high volume of cases.”<sup>38</sup>

The court received national attention for its structure and its processes. In 1988 we received an award from the Foundation for Improvement of Justice for deciding more than eight thousand cases within ninety days of submission.<sup>39</sup> In 1992 we received favorable review in the *Wall Street Journal* in an article with a headline that stated in large letters, “Minnesota Appeals Court

34. Sheran & Amdahl, *supra* note 4, at 249.

35. *Id.*

36. Letter from Douglas K. Amdahl, Chief Justice, Minn. Supreme Court to Harriet Lansing, Judge, Minn. Court of Appeals (1986) (on file with author); *see also* Sheran & Amdahl, *supra* note 4, at 251.

37. Douglas K. Amdahl, *Appeals to the New Minnesota Court*, 10 WM. MITCHELL L. REV. 623, 624 (1984).

38. *Appeals court given high marks*, Associated Press, 1987 (quoting Bill Sieben, president of the Minnesota Trial Lawyers Association).

39. Program for Foundation for Improvement of Justice’s Third Annual Awards Banquet in Atlanta, Georgia (Oct. 22, 1988), *in* THE JUDICIAL CAREER OF PETER S. POPOVICH, *supra* note 3, at 642–43.

Program Eliminates Crushing Case Backlog.”<sup>40</sup> The article stated that “[t]he wheels of justice spin at full tilt in Minnesota’s Court of Appeals” and that our court processes make us “an exception among appeals courts across the country which are staggering under huge backlogs.”<sup>41</sup>

The court continued to receive positive reviews as it approached and moved beyond the ten-year mark. In a 1993 editorial, the *Minneapolis Tribune*, after extolling our virtues of timeliness and productivity, asked, “How did Minnesota ever get by without this court?”<sup>42</sup>

Eric Magnuson, one of Minnesota’s preeminent appellate lawyers, and now our valiant chief justice, observed that the court had, early in its existence, established a tremendous track record for speedy and thorough appellate decision-making: “I realize time and again how fortunate we are to have an appellate system that provides nearly universal oral argument, and a written opinion in virtually every case, all in a relatively short and dependable period of time. Most judges and lawyers in other jurisdictions find it hard to believe that almost 100% of the court of appeals decisions are decided within [ninety] days . . . .”<sup>43</sup>

## V. GROWING PAINS

But the road was not always smooth and the sun was not always shining, and some days we weren’t sure whether we were the steamroller or the pavement under it. At the outset, we suffered deep division when we sat by designation as the supreme court in the judicial disciplinary proceedings that involved sitting Supreme Court Justice John Todd. Peter Popovich, in his dissent from our decision to send the case to a fact-finding panel, characterized the process as agonizing for the court, and we all agreed with that assessment.<sup>44</sup>

In 1988, we lost our beloved colleague, Sue Sedgwick, to her battle with cancer. And in 1995 we sustained an enormous loss in the untimely death of our newly appointed chief judge, Anne

40. Arthur S. Hayes, *Minnesota Appeals Court Eliminates Crushing Case Backlog*, WALL ST. J., June 8, 1992, at B8.

41. *Id.*

42. Editorial, *Appeals Court*, STAR TRIB. (Minneapolis), Dec. 13, 1993, at 14A.

43. Sheran & Amdahl, *supra* note 4, at 265 (quoting Eric Magnuson).

44. *In re Todd*, 359 N.W.2d 24, 26 (Minn. Ct. App. 1984); *see also* Larson, *supra* note 7, at 637 n.55 (describing process).

Simonett.

In 2002, we endured the tragedy of Judge Roland Amundson's conviction for theft from a trust fund that he supervised. Although the trust fund was private rather than public, and the defalcation did not directly involve his work at the court, it was a bone-chilling time for all of us.

Sprinkled in among those years we encountered growth in caseload that required expansion of the number of judges on the court. In 1986, the legislature authorized funding for a thirteenth judge.<sup>45</sup> In 1990, three more judges were added, which brought us to a sixteen-member court.<sup>46</sup> We stayed at that number until 2008 when we added the three newly authorized judges to bring our total number to nineteen. Notably, this is still fewer than the number we would have had under the original statutory provision of one judge for each one hundred cases.<sup>47</sup> That provision was repealed when it became evident that the court would have had twenty-five judges by the early 1990s.<sup>48</sup>

We have also made a number of procedural changes through the years. In the first five years we published all of our opinions, but for a variety of reasons, including the growth of the caseload, the legislature amended the statute to allow for unpublished opinions.<sup>49</sup> In the early years we also had an en banc procedure to resolve cases that were perceived to be inconsistent.<sup>50</sup> We abandoned that process within the first five years. We also had a time when some of the members of the court relied more heavily on order opinions rather than published or unpublished opinions.<sup>51</sup> Although the order opinions stated reasons for the decision, the use of the order opinion brought back genuine concerns about returning to the supreme court's summary affirmances, which was one of the practices that had given rise to the court of appeals. The use of order opinions in any significant number for other than procedural or special-term opinions has essentially ceased.

45. Popovich, *supra* note 3, at 19.

46. Act of June 3, 1989, ch. 335 art. 1, § 4, 1989 Minn. Laws 2691, 2698.

47. MINN. STAT. § 480A.01(3) (1982).

48. Act of May 8, 1990, ch. 594, art. 1, § 75, 1990 Minn. Laws 2329, 2361.

49. Act of June 12, 1987, ch. 404, § 182, 1987 Minn. Laws 3490, 3622.

50. MINN. CT. APP. INTERNAL R. 4.4, 4.5 (1987).

51. D.D. Wozniak, Chief Judge, Minn. Court of Appeals, Address Before the Minnesota State Bar Association Board of Governors (Jan. 17, 1992) (transcript on file with author); *cf.* Larson, *supra* note 7, at 642–43.

## VI. GUIDING PRINCIPLES IN REVIEW

To complete our evaluation, what about those seven principles we identified as the standards for review hammered out by the court's framers and the court's loyal opposition?

Our first standard of taking pressure off the supreme court is perhaps the easiest standard to measure. Since we started operations in November 1983 we have decided—as of November 2, 2008—more than fifty-six thousand cases.<sup>52</sup> Viewed from our standpoint, we are absolutely convinced that this is a lot of pressure that was taken from the overwhelmed supreme court, struggling for survival in 1982.

The second standard is also susceptible of precise review—offering oral arguments in all of our cases. With limited exceptions for expedited cases and pro se litigants, we have consistently offered oral argument to all appellants and provided it to those who requested it. This is a rare feature of a state intermediate appellate court.<sup>53</sup>

The third standard is issuing written opinions in all of our cases. I have referred to the brief period of time in which some members of the court developed a practice of issuing order opinions—a practice that has essentially fallen by the wayside except for a limited number in appropriate circumstances. We issue written opinions in all of our cases using an opinion format that includes a concise statement of the facts, the issues addressed, an analysis of those issues, and the reasons for our decision.

Our fourth standard—setting oral argument and non-oral conference dates as promptly as possible after the filing of the case—has presented our most significant current challenge. Our goal of issuing an opinion in every case within six months of the appellate filing has been thwarted in some circumstances by unexpected increases in case filings, loss of staff through budget cuts, unavailability of funds for retired judges because of budget cuts, and large lapses of time between the retirement of a judge and when the position is filled. Although in 2006 and 2007 we were not able to maintain those 132-day records we set at the

---

52. Craig Hagensick, Research Analyst, Minn. State Court Administration Research and Analysis Offices. Statistics on file and compiled in annual report of Minn. State Court Administration, Dec. 31, 2008..

53. Norberg, *supra* note 24, at 123–24; Geoffrey W. Peters, *The Problems of Caseload and Delay in the Minnesota Supreme Court—An Introduction to a Symposium*, 7 WM. MITCHELL L. REV. 41, 46 (1981).

beginning of the court, we have never approached the fifteen to twenty-two months that the supreme court was experiencing before our court was created.<sup>54</sup> In these last three years, however, we have experienced a steady upward trend that caused us to fear that we might reach a twelve-month median.<sup>55</sup> It was that reality that spurred the initiative for the additional three judges who are now sworn in and on board.

Our fifth standard—that the authoring judge should issue his or her opinion within ninety days of oral argument or nonoral conference—has fared exceptionally well over time. We have had only a handful of deviations from that requirement even under extraordinary pressures. This is a real tribute to the now forty-three judges who have served on the court and to the clerks and staff who have assisted us.

Our sixth standard—to hear cases around the state—has also maintained its vitality despite some reliance on interactive technology in the dead of winter and at other times to take pressure off the budget. We still travel regularly to Duluth, St. Cloud, Moorhead, Rochester, New Ulm, Brainerd, Owatonna, and other locations around the state.

Finally, our seventh standard—that at least 85%, maybe 90%, or in Justice Amdahl's most ambitious predictions, 95% of the appeals would stop at the court of appeals level and not require further review. This has been a roaring success. Editorial writers across the state who stood with us on this one would be mightily relieved to see our statistics. The number has always run high, but in the three most recent years, it has been truly high. For 2005 and 2006, the percentage of appeals that had their final resolution at our court reached a height of 95%.<sup>56</sup> We managed to keep that over-the-top optimistic estimate provided by Justice Amdahl to spur on the creation of the court. And in 2007, we have raised that number to an awesome 97%!<sup>57</sup> Which is to say that only 3% of our cases received further review; we have met that daringly high prediction of a possible 95% and exceeded it.

Now, because I am pushing the boundaries for exceeding the

---

54. Editorial, *Minnesota Appeals Court is Up to Voters*, STAR TRIB. (Minneapolis), Apr. 1, 1982, at 6A, reprinted in STEPPING STONES, *supra* note 1, at 405 (noting that supreme court appeals were taking fifteen months for civil cases and twenty-two months for criminal).

55. Hagensick, *supra* note 52.

56. *Id.*

57. *Id.*

amount of information that anyone could reasonably want on court of appeals statistics—even on the occasion of our birthday—I will make only fleeting comments about the court’s twenty-fifth anniversary year and our continuing initiatives.

## VII. THE FUTURE

We have been working very hard in conjunction with consultants from the National Center for State Courts to carefully monitor case flow.<sup>58</sup> We were deeply concerned about the growing backlog of cases awaiting scheduling caused by budget cuts and unfilled judicial vacancies. Our initiatives to decrease the backlog have reduced it by 60% over the last year and, based on statistics and predictions at our November court meeting, we fully expect to have eliminated the backlog altogether by the summer of 2009.<sup>59</sup> This, of course, is an ongoing challenge as we continue to plan to meet the next influx of cases. But the sharp reduction of a backlog exceeding five hundred cases was accomplished by all of the judges taking on extra cases in addition to regular calendars, holding two blitz weeks in September 2007 and 2008 when judges sat on extra panels, and, mercifully, bringing the court up to its full complement of judges and having the three new judges on board.

As part of case-flow monitoring we are also doing a comprehensive analysis of the central staff function and structure and trying to determine how these scarce legal resources can best serve the court.

We continue to work on the clarity and crafting of our opinions with focused feedback on reading and commenting on each other’s opinions and getting post-release commentary from professionals outside the court.

In September 2008, we launched our family law appellate mediation project. In midsummer we received a small technical assistance grant from the State Justice Institute, and, after an intense planning stage and the help of a public spirited William Mitchell professor, dedicated members of a court work group, and a talented and experienced group of mediators, family law appellate mediation is now fully in process.<sup>60</sup>

---

58. NAT’L CTR. FOR STATE COURTS, WORKFLOW STUDY MINNESOTA COURT OF APPEALS, 2007.

59. Hagensick, *supra* note 52 (basing statistics on projections and the number of cases awaiting scheduling).

60. Michelle Lore, *Family Cases at Court of Appeals to go to Mediation*, MINN.



We have also taken time to value the present as well as evaluate the past. In October 2008 we had a very successful reunion of the court's loyal band of highly accomplished current and former law clerks. More than 160 attended the event that was organized with the help of the appellate section of the Minnesota State Bar Association and the Supreme Court Historical Society.

Finally, we have planned, and brought to fulfillment, this celebration and symposium marking the twenty-fifth anniversary of the Minnesota Court of Appeals. Minnesota's lawyers have again risen to the occasion. Under the guidance of David Herr and others, we have a full-day symposium. Judge Jill Halbrooks ably chaired an overview committee for both the symposium and the evening celebration at the Landmark Center, where the court had its official beginning at the 1983 investiture. Chief Judge Edward Toussaint and I, with the help of others, have worked with Lightshed Productions to produce a great documentary film on the history of the court, and Professor Sherrilyn Ifill agreed to present remarks on the critical importance of citizens' rights to fair and impartial courts.

#### VIII. CONCLUSION

What is the bottom line on doing Minnesota justice? We decided more than 56,000 cases, provided across-the-board oral arguments, kept cases moving, made phenomenal progress on our recent backlog, kept the written opinions coming, worked exceedingly well together as a judicial team, traveled around the state to hear arguments, and in our most recent year, have resolved and reached finality in 97% of the cases that have been appealed to the court.

I think we can honestly say, as we mark our quarter century of existence, that we have honored the commitment of those people who created this court and kept faith with those who have daily put their shoulder to the wheel that moves at full tilt, and we have earned the right to celebrate twenty-five years of doing Minnesota justice. If the truth were to be fully known—if I were permitted one last conversation with my spirited colleague Joe Summers—I would tell him that despite his dire predictions, there is a solid core of people throughout Minnesota who truly believe that since Justice Amdahl and the six members of the newly created court stood on

---

LAW., Aug. 25, 2008, at 1, 9.

that platform at the Landmark Center on November 2, 1983, the winters in Minnesota have gotten steadily and irreversibly warmer.